

Order 96-10-28

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

SERVED OCT 21 1996

Issued by the Department of Transportation
on the 21st day of October, 1996

Application of

JAPAN AIR LINES COMPANY, LTD.

Dockets OST-95-971

for an exemption under 49 U.S.C.
section 40109

ORDER

Summary

In this order we are granting Japan Air Lines Company, Ltd. (JAL) an exemption from section 41301 of Title 49 of the U.S. Code to conduct scheduled combination services between Tokyo, Japan, and Kona, Hawaii, for the winter 1996/97 season.¹

Background

By Order 96-5-4, served May 1, 1996, we granted JAL exemption authority to conduct scheduled combination services in the Tokyo-Kona market, for the summer 1996 season (through October 26, 1996). Our action was based on an arrangement reached by U.S. and Japanese officials during April 1996, whereby the two sides agreed to allow a number of services to operate. In addition to the grant of JAL's Tokyo-Kona authority, the two sides agreed that United Air Lines, Inc. would be allowed to operate its Osaka-Seoul service for the summer 1996 season.

¹ JAL holds a foreign air carrier permit issued by Order 70-8-66. JAL also holds various exemptions to perform specified services between Japan and the United States.

Application

By application filed September 12, 1996, JAL seeks to renew its exemption authority to engage in scheduled foreign air transportation of persons, property and mail between Tokyo and Kona. JAL requests that it be authorized to serve Kona on both a non-stop basis and a one-stop basis over Honolulu, for a period of not less than one year.

In support of its request, JAL states that the authority requested is consistent with a 1989 Memorandum of Understanding between the United States and Japan (1989 MOU), that it has been designated by the Government of Japan to perform the proposed services, and that its services will benefit the traveling public.²

Responsive Pleadings

Answers in response to JAL's request were filed by the State and County of Hawaii (the Hawaii Civic Parties), and United Air Lines, Inc.

The Hawaii Civic Parties support JAL's request and state that the requested authority is consistent with the provisions of the 1989 MOU between the United States and Japan, and that grant of JAL's request will provide new service to Hawaii and advance the economic interests of Hawaii and the United States. The Hawaii Civic Parties also urge us to grant JAL's authority for a period of not less than one year.

United urges us to grant JAL's request for a period commensurate with Japan's approval of United's Osaka-Seoul authority. United states that on September 9, 1996, it filed its schedule with the Government of Japan to continue its Osaka-Seoul services for the winter 1996/1997 season. United states that if the Japanese approve its schedule in its entirety, United will be permitted to continue its Osaka-Seoul services from October 27, 1996, through March 29, 1997. United further states that both governments should take appropriate actions to permit the United and JAL services to continue.

No additional pleading were filed in response to JAL's request.

² JAL filed an application with the Department in Docket OST-95-973 to amend its foreign air carrier permit to include the authority at issue here.

Decision

We have decided to grant JAL's request to serve Kona, Hawaii, on both a non-stop basis and a one-stop basis over Honolulu, for the winter 1996/97 season (through March 29, 1997).³ We are making this authority subject to the terms and conditions of the 1989 MOU, and JAL's foreign air carrier permit. The requested authority is provided for in the 1989 MOU between the United States and Japan, and JAL has been designated by its government to perform the services requested.

We believe that extending JAL's authority through the winter 1996/97 season is the appropriate course of action, and best serves the public interest, given the current state of our aviation relations with Japan. We are granting this authority with the expectation that the Government of Japan will be equally forthcoming with United's pending request to extend its Osaka-Seoul services through the winter season.

The authority JAL seeks to extend is an on-going service which the record indicates provides significant economic benefits to Hawaii in the form of tourism and enhanced service benefits to the traveling and shipping public.

Based on the foregoing, we find that our action is consistent with the public interest and the 1989 MOU, and that the exemption granted JAL does not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

ACCORDINGLY,

1. We grant Japan Air Lines Company, Ltd. an exemption from section 41301 of Title 49 of the U.S. Code to permit it to engage in scheduled foreign air transportation of persons, property and mail between Tokyo, Japan, and Kona, Hawaii, through the winter 1996/97 season;
2. The authority granted above shall be effective from the service date of this order through March 29, 1997;

³ Since the duration of JAL's authority is for a period of fewer than 180 days, this is not a license with reference to an activity of a continuing nature within the meaning of 5 USC 558(c). See 14 CFR Part 377.

3. The authority granted in ordering paragraph 1 above is subject to the conditions of Japan Air Lines' foreign air carrier permit (Order 70-8-66) and the 1989 MOU;

4. To the extent not granted, we deny any additional requests for relief in Docket OST-95-971;

5. We may amend, modify or revoke this authority at any time and without hearing; and

6. We will serve a copy of this order on Japan Air Lines Company, Ltd.; United Air Lines, Inc.; Northwest Airlines, Inc.; the State of Hawaii; the County of Hawaii; the Embassy of Japan in Washington, D.C.; the Department of State Office of Aviation) and the Federal Aviation Administration (SF-IFO).

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)